

1 BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

2 STATE OF MONTANA

3 \* \* \* \* \*

4 IN RE THE MATTER OF THE PETITION )  
5 TO TRANSFER TERRITORY FROM REED ) OSPI 213-92  
6 POINT JOINT HIGH SCHOOL DISTRICT )  
NO. 9-9 TO COLUMBUS HIGH SCHOOL ) DECISION AND ORDER  
DISTRICT NO. 6 )

7 \* \* \* \* \*

8 **PROCEDURAL HISTORY OF THIS APPEAL**

9 On May 14, 1992, the Stillwater County Superintendent  
10 received a valid petition for transfer of territory pursuant to  
11 § 20-6-320, MCA. The petition requested the transfer of certain  
12 described property from Reed Point Joint High School District #9-  
13 9 to the Columbus High School District #6. The Stillwater County  
14 Commissioners certified the petition on June 4, 1992. A public  
15 hearing was held in the Columbus Civic Center on July 10, 1992.

16 Following the July 10, 1992, public hearing, the County  
17 Superintendents of Stillwater and Sweet Grass Counties issued  
18 their FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER granting  
19 the petition to transfer the territory on August 7, 1992. The  
20 decision of the County Superintendents was appealed to the State  
21 Superintendent on September 4, 1992. The parties briefed the  
22 issues and the matter was deemed submitted on February 23, 1993.

23 **STANDARD OF REVIEW**

24 This matter is on appeal to the State Superintendent of  
25 Public Instruction in accordance with § 20-6-320(7), Montana  
Codes Annotated (MCA). Rules of Procedure adopted by the State

1 Superintendent, specifically Rule 10.6.125, Administrative Rules  
2 of Montana (ARM), adopt the standard of review established by the  
3 Montana Legislature in § 2-4-704, MCA. The Montana Supreme Court  
4 has repeatedly stated that findings of fact are reviewed under a  
5 clearly erroneous standard and conclusions of law are reviewed  
6 under an abuse of discretion standard. See, for example, Harris  
7 v. Trustees Cascade County School Districts No. 6 and F, and  
8 Nancy Keenan, 241 Mont. 274, 786 P.2d 1164, 9 Ed. Law 34 (1990).  
9 The Petitioner bears the burden of showing there is a clearly  
10 erroneous finding. Terry v. Board of Regents, 220 Mont. 214, 714  
11 P.2d 151 (1986).

12 The State Superintendent may not substitute her judgment for  
13 that of a County Superintendent as to findings of fact. Findings  
14 are upheld if supported by substantial, credible evidence in the  
15 record. A finding is clearly erroneous only if a "review of the  
16 record leaves the Court with the definite and firm conviction  
17 that a mistake has been committed." Wage Appeal v. Board of  
18 Personnel Appeals, 208 Mont. 33, at 40, 676 P.2d 194, at 198  
19 (1984).

20 The Montana Supreme Court has held that conclusions of law  
21 are reviewed to determine if the agency's interpretation of the  
22 law is correct. Steer, Inc. v. Dept. of Revenue, 245 Mont. 470,  
23 at 474, 803 P.2d at 603 (1990).

#### 24 DECISION AND ORDER

25 The State Superintendent has jurisdiction over this matter  
under § 20-6-320, MCA. This Superintendent, having considered

1 the complete record of the hearing before the County  
2 Superintendents and the briefs filed by the parties, AFFIRMS the  
3 decision of the County Superintendents granting the petition for  
4 transfer and MODIFIES their Order as follows:

5 Delete:

6 "WE FURTHER HEREBY ORDER, pursuant to section 20-6-314,  
7 MCA, said boundary will be changed on the Tuesday  
8 following the second Monday in August, 1992, with  
9 effected change in taxable value being calculated and  
10 filed in July of 1993 by the Stillwater County  
11 Assessor."

12 Add:

13 "Pursuant to sections 20-6-320(7) and 20-6-314, MCA,  
14 said boundary change will be effective August 9, 1993."

#### 15 MEMORANDUM OPINION

16 Issues raised on appeal are:

17 (A) that the County Superintendents did not sufficiently  
18 take into account the effect of the transfer on the remaining  
19 taxpayers in the Reed Point School District as required by § 20-  
20 6-320(6);

21 (B) that the County Superintendents erred in setting the  
22 effective date of the transfer as August 11, 1992; and

23 (C) that the County Superintendents committed additional  
24 errors of law in the decision.

25 A. County Superintendents did consider the financial impact  
of the transfer on the remaining taxpayers in the Reed Point  
School District.

Appellant asks this Superintendent to substitute her  
judgment for that of the two County Superintendents as to what

1 weight Finding of Fact No. 9 should have in the decision to grant  
2 or deny the petition. Section 20-6-320(6), MCA, requires that  
3 the decision to grant or deny the petition to transfer the  
4 territory "be based on the effects that the transfer would have  
5 on those residing in the territory proposed for transfer as well  
6 as those residing in the remaining territory of the high school  
7 district." Findings of Fact No. 9 (a decrease taxable value of  
8 \$135,964 in the Reed Point High School District) and No. 16  
9 (transfer would cause no decrease in annual number of belonging  
10 in Reed Point Joint High School District #9-9 because no students  
11 in the transferred territory attend Reed Point) clearly  
12 demonstrate that the financial effects of the transfer on the  
13 Reed Point School District were considered by the County  
14 Superintendents and weighted in their decision to grant the  
15 petition.

16 B. Given the appeal of the County Superintendent's decision  
17 in this matter to the State Superintendent under § 20-6-320, MCA,  
18 their setting the effective date of the transfer as August 11,  
19 1992, is harmless error.

20 Under the language of § 20-6-320, the decision of the County  
21 Superintendents was not a final decision until 30 days from the  
22 date of the decision, and then only if the decision was not  
23 appealed to the State Superintendent of Public Instruction. The  
24 August 7, 1992, decision of the County Superintendents was timely  
25 appealed to the State Superintendent and therefore, never became  
a final decision under § 20-6-320, MCA.

1       Section 20-6-314, MCA, prohibits the transfer of territory  
2 between the first day of March and the second Monday of August.  
3 The transfer of the described territory is effective 30 days  
4 after the date of the State Superintendent's decision unless that  
5 date falls within the period of time during which a boundary  
6 change is prohibited by § 20-6-314, MCA. The transfer of  
7 territory from Reedpoint to Columbus High School is effective  
8 August 11, 1993, unless a stay is granted in accordance with § 2-  
9 4-702, MCA.

10       C. The County Superintendents did not commit additional  
11 errors of law.

12       Section 20-6-320, MCA, grants a county superintendent the  
13 jurisdiction to hear and decide a certified petition for transfer  
14 of territory from one high school district to another. This  
15 Superintendent is unaware of any statute granting jurisdiction to  
16 a county superintendent to decide disputes in regard to issues of  
17 bonded indebtedness, nor is any cited by petitioner or appellant.  
18 Absence such a grant of jurisdiction, the county superintendent  
19 lacks subject matter jurisdiction to decide disputes in regard to  
20 bonded indebtedness.

21       Appellant failed its burden to show that the County  
22 Superintendents abused their discretion in granting the petition  
23 to transfer the described territory from Reed Point High School  
24 to Columbus High School.

1 DATED this 22 day of June 1993.

2  
3 Nancy Keenan  
4 NANCY KEENAN

5 **CERTIFICATE OF SERVICE**

6 THIS IS TO CERTIFY that on this 22d day of June, 1993, a  
7 true and exact copy of the foregoing Decision and Order was  
8 mailed, postage prepaid, to the following:

9 Richard L. Parish  
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